



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

January 25, 2016

Mr. David Scott Garmon
12890 North County Road 275 East
Chrisney, Indiana 47611

*Re: Formal Complaint 15-FC-330; Alleged Violation of the Access to Public Records Act by the
Spencer County Sheriff's Department*

Dear Mr. Garmon:

This advisory opinion is in response to your formal complaint alleging Spencer County Sheriff's Office ("Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Office responded via Mr. James McDurmon, Sheriff. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 22, 2015.

BACKGROUND

Your complaint dated December 17, 2015 alleges the Spencer County Sheriff's Office violated the Access to Public Records Act by improperly denying your records request.

You are seeking call records related to an incident which occurred on October 1, 2015. The Department received your request on November 25, 2015. On December 8, 2015 the Sheriff partially denied your request, stating the request was overly broad and would entail nearly 30 hours of material. The Sheriff also noted some records requested are investigatory records exempted from disclosure under the APRA.

The Sheriff responded to your formal complaint on January 8, 2016. The Sheriff states it is unclear about the nature of your public access complaint, because he believes your request for records have been fulfilled.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Spencer County Sheriff's Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1).

Accordingly, any person has the right to inspect and copy the Sheriff's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A large portion of your complaint is concerned with the actions of a police officer and an alleged vehicular encounter in October. You suggest public records have been altered as a cover-up after you lodged complaints with various public agencies. Only an evidentiary proceeding would be appropriate for these claims. Please be advised this Office does not make determinations as to factual matters associated with these types of allegation.

As for your request, you sought "all phone calls, recordings, radio traffic and log entry" related to five separate timeframes. This request is indeed broad. The Sheriff contends it is so broad that production of documents for this request would unreasonably burden the agency's ability to function. Under the APRA, an agency may deny a request if it is too broad or places an unreasonable burden on the agency's ability to function. The law calls for "reasonable particularity" when seeking records. See Ind. Code § 5-14-3-3. This does not mean your request has to identify records with pinpoint accuracy, but rather it should focus a search with as much detail as possible. For example, you know the approximate time, location, and officers involved with the incident in question. You could specify this information in your request and it would be particular enough for the Sheriff to search and produce records associated with that vehicular incident. A generalized request for all phone calls, recordings, radio traffic and logs is a wide swath of information. I recommend narrowing the focus of your records request.

Additionally, under Ind. Code § 5-14- 3-4(b)(1), investigatory records of law enforcement agencies are exempt from disclosure at the discretion of the agency. The Spencer County Sheriff's Office is a law enforcement agency and can therefore raise the exemption albeit with the caveat that they should exercise such discretion judiciously. To the extent the production of records would compromise public safety or the expectation of privacy, investigatory records should be withheld. If the matter is closed and would not compromise an ongoing investigation, however, law enforcement agencies should use its judgment in favor of transparency.

My recommendation is that you narrow your search for the particular records associated with the incident you cite in your formal complaint. My advice to the Sheriff is that his office work with you (*to a reasonable extent*) to help clear up this misunderstanding and provide you with the records you seek.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. James McDurmon, Sheriff